

Revised proposal for a compromise

Status: 5 February 2024

Article 3. Scope of application

This Convention shall apply, except as otherwise stated herein, to:

- a- The prevention, investigation and prosecution of the criminal offences established in accordance with this Convention, including the freezing, seizure, confiscation and return of the proceeds from such offences.
- b- The collecting, obtaining, preserving and sharing of evidence in electronic form **for the purpose of criminal investigations or proceedings, as provided for in articles 23 and 35 of this Convention.**

Article 5. Respect for human rights

States Parties shall ensure that the implementation of their obligations under this Convention is consistent with their obligations under international human rights law.

Article 23. Scope of procedural measures

1. Each State Party shall adopt such legislation and other measures as may be necessary to establish its powers and procedures provided for in this Chapter for the purpose of **specific** criminal investigations or proceedings.
2. Except as provided otherwise in this Convention, each State Party shall apply the powers and procedures referred to in paragraph 1 of this article to:
 - (a) The criminal offences established in accordance with this Convention;
 - (b) Other criminal offences committed by means of [a computer system] [an information and communications technology device]; and
 - (c) The collection of evidence in electronic form of any criminal offence.
3. (a) Each State Party may reserve the right to apply the measures referred to in article 29 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in article 30. Each State Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in article 29;
 - (b) Where a State Party, owing to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in articles 29 and 30 to communications being transmitted within a [computer system] [information and communications technology device] of a service provider, which:
 - (i) Is being operated for the benefit of a closed group of users; and

(ii) Does not employ public communications networks and is not connected with another [computer system] [information and communications technology device], whether public or private;

that State Party may reserve the right not to apply these measures to such communications. Each State Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in articles 29 and 30.

Article 24. Conditions and safeguards

1. Each State Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Chapter are subject to conditions and safeguards provided for under its domestic law, **which shall provide for protection of human rights**, in accordance with its obligations under international human rights law, and which shall incorporate the principle of proportionality.
2. **In accordance and pursuant to the domestic law of each State Party**, such conditions and safeguards shall, as appropriate in view of the nature of the procedure or powers concerned, inter alia, include judicial or other independent review, **the right to an effective remedy**, grounds justifying application, and limitation of the scope and the duration of such power or procedure.¹
3. To the extent that it is consistent with the public interest, in particular the proper administration of justice, each State Party shall consider the impact of the powers and procedures in this Chapter upon the rights, responsibilities and legitimate interests of third parties.

Article 35. General principles of international cooperation

1. States Parties shall cooperate with each other in accordance with the provisions of this Convention, as well as other applicable international instruments on international cooperation in criminal matters, and domestic laws, for the purpose of:
 - a- The investigation¹, prosecution and judicial proceedings of the criminal offences established in accordance with this Convention, including the freezing, seizure, confiscation and return of the proceeds from such offences.
 - b- **The collecting, obtaining, preserving and sharing of evidence in electronic form of criminal offences established in accordance with this Convention;**
 - c- **The collecting, obtaining, preserving and sharing of evidence in electronic form of offences established in accordance with other applicable United Nations conventions and protocols, in force at the time of adoption of this Convention;**
 - d- **The collecting, obtaining, preserving and sharing of evidence in electronic form of any serious crime.**
2. **For the purpose of the collecting, obtaining, preserving, and sharing of evidence in electronic form of offences provided for in paragraph 1**

¹ An explanatory note could be added to underline that investigation encompasses also situations where there is a reasonable basis to believe that a crime is going to be committed.

subparagraphs b and c of this article, the relevant paragraphs of article 40, and articles 41 to 46 of this Convention shall apply.

3. Measures of international cooperation are to be carried out in accordance with the domestic law of the requested State Party, which provides for conditions and safeguards as specified in relevant articles of this Convention.

4. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article 36

Protection of personal data (will be discussed at the Plenary)

Article 59 [additional paragraph 3]

3. Without prejudice to lawful restrictions allowed by applicable international human right conventions, nothing in this Convention shall be interpreted as permitting or facilitating repression of expression, conscience, opinion, belief, peaceful assembly or association.

Article 60 bis [former article 17]

1. In giving effect to other applicable United Nations conventions and protocols to which they are party, State Parties shall ensure that criminal offences established in accordance with such conventions and protocols are also considered criminal offences under domestic law when committed with the involvement of [a computer system] [an information and communications technology device].

2. Nothing in this article shall be interpreted as establishing offences under this Convention.

New paragraph in the draft resolution

“5bis. Decides that the Ad Hoc Committee shall continue its work, mutatis mutandis, in accordance with resolution 74/247 of 27 December 2019 and resolution 75/282 of 26 May 2021, to elaborate a draft protocol addressing additional forms of offences and, if needed, relevant aspects consistent with the scope of the additional protocol. For that purpose, three negotiating sessions, of a duration of 10 working days each, with the first and second session taking place in 2025, and the third session taking place in the first half of 2026, should be conducted for the purposes of adopting the draft protocol for submission to the General Assembly, as soon as possible;